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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Respondent,  
  
v.  
  
CY IRVING BROWN,  
  
Movant.

No. 2:03-cr-0104 MCE AC

ORDER

Movant, a federal prisoner proceeding through counsel, has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 9, 2019, the Magistrate Judge filed Findings and Recommendations (“F&Rs”) herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 205. Movant has filed objections to the F&Rs. ECF No. 207.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the F&Rs to be supported by the record and by proper analysis.

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1 Nevertheless, Movant has adequately demonstrated that the issues presented by this case  
2 may be “debatable among jurists of reason,” could be resolved differently by another court, or  
3 are “adequate to deserve encouragement to proceed further.” Jennings v. Woodford, 290 F.3d  
4 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup> Before  
5 Movant can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);  
6 Fed. R. App. P. 22(b). A certificate of appealability may issue “only if the applicant has made a  
7 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The  
8 certificate of appealability must “indicate which specific issue or issues satisfy” the requirement.  
9 28 U.S.C. § 2253(c)(3).


10 In the present case, Movant has demonstrated entitlement to a certificate of appealability  
11 concerning whether the construction of his conviction for armed robbery as a crime of violence  
12 under 18 U.S.C. § 924(c) was constitutional.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The F&Rs filed April 9, 2019 (ECF No. 205), are ADOPTED in full;
- 15 2. The Motion to Vacate, Set Aside, or Correct Movant’s sentence pursuant to 28 U.S.C.  
16 § 2255 (ECF No. 195) is DENIED;
- 17 3. A certificate of appealability is issued in the present action; and
- 18 4. The Clerk of the Court is directed to close the companion civil case, No. 2:17-cv-1857  
19 MCE AC, and to enter judgment.

20 IT IS SO ORDERED.

21 Dated: June 13, 2019

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23 MORRISON C. ENGLAND, JR.  
24 UNITED STATES DISTRICT JUDGE  
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27 <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard for  
28 issuance of a certificate of appealability is the same as the standard that applies to issuance of a  
certificate of probable cause. Jennings, at 1010.